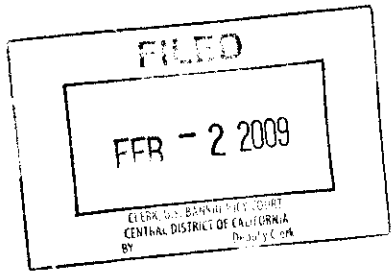


ORIGINAL

LC

Attorney or Party Name, Address, Telephone and Fax Number, and CA State Bar No.		FOR COURT USE ONLY
Leonard M. Shulman - Bar No. 126349 Mark Bradshaw - Bar No. 192540 SHULMAN HODGES & BASTIAN LLP 26632 Towne Centre Drive, Suite 300 Foothill Ranch, California 92610 Telephone: (949) 340-3400 Facsimile: (949) 340-3000		
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA		
In re: CULINARY ADVENTURES INCORPORATED, a Delaware corporation, Debtor(s).		
		CASE NO.: 8:08-14877 ES Chapter 11

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: February 12, 2009	Time: 10:30 A.M.
Location: Courtroom 5A of the United States Bankruptcy Court, Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Santa Ana, California 92701	

Type of Sale: ☐ Public ☒ Private Last date to file objections: See attached Notice

Description of Property to be Sold: **Assets related to the Debtor's operation of French 75 Laguna Beach - see the attached Notice of Motion and Motion By Debtor's for Order: (1) Approving the Sale of the Assets, Business and Properties Utilized by the Debtor in the Operation of the Debtor's Restaurant Known as "French 75 Laguna Beach", et al.**

Terms and Conditions of Sale: See attached

Proposed Sale Price: See attached

Overbid Procedure (If Any): See attached

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

February 12, 2009 at 10:30 A.M., in Courtroom 5A, Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street, Santa Ana, California 92701

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e-mail address):

Mark Bradshaw, Esq.
Shulman Hodges & Bastian LLP
26632 Towne Centre Drive, Suite 300, Foothill Ranch, CA 92610
Telephone: (949) 340-3400; Facsimile: (949) 340-3000

Date: **January 30, 2009**

1 Leonard M. Shulman - Bar No. 126349
Mark Bradshaw - Bar No. 192540
2 **SHULMAN HODGES & BASTIAN LLP**
26632 Towne Centre, Suite 300
3 Foothill Ranch, California 92610-2808
Telephone: (949) 340-3400
4 Facsimile: (949) 340-3000

5 Attorneys for the Debtor and Debtor in Possession
Culinary Adventures, Inc., a Delaware corporation
6
7

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**
10

11 In re

12 **CULINARY ADVENTURES**
13 **INCORPORATED, a Delaware**
14 **corporation,**

15 Debtor.
16
17
18
19
20
21
22
23
24
25
26
27
28

Case No. 8:08-14877 ES

Chapter 11

**NOTICE OF CHANGE OF HEARING ON DEBTOR
AND DEBTOR IN POSSESSION MOTION FOR
ORDER:**

- (1) **APPROVING THE SALE OF THE ASSETS,
BUSINESS AND PROPERTIES UTILIZED BY
THE DEBTOR IN THE OPERATION OF THE
DEBTOR'S RESTAURANT KNOWN AS
"FRENCH 75 LAGUNA BEACH" FREE AND
CLEAR OF LIENS PURSUANT TO
BANKRUPTCY CODE SECTION 363(b)(1) AND
(f);**
- (2) **APPROVING ASSUMPTION AND
ASSIGNMENT OF LEASES AND EXECUTORY
CONTRACTS INCLUDED IN THE SALE;**
- (3) **COMBINED WITH NOTICE OF BIDDING
PROCEDURES AND REQUEST FOR
APPROVAL OF BIDDING PROCEDURES AND
BREAK-UP FEE;**
- (4) **AND GRANTING RELATED RELIEF;**

NEW HEARING DATE

Date: February 12, 2009

Time: 10:30 a.m.

Place: Courtroom 5A

Ronald Reagan Federal Building
and United States Courthouse
411 West Fourth Street
Santa Ana, California 92701

1 **TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY**
2 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND ALL PARTIES IN**
3 **INTEREST IN THE COUNSEL OF RECORD:**

4 **PLEASE TAKE NOTICE** that the hearing on Culinary Adventures, Inc., a Delaware
5 corporation, the debtor and debtor in possession herein ("Debtor") Motion for Order: (1)
6 Approving the Sale of the Assets, Business and Properties Utilized by the Debtor in the
7 Operation of the Debtor's Restaurant known as "French 75 Laguna Beach" Free and Clear of
8 Liens Pursuant to Bankruptcy Code Section 363(b)(1) and (f); (2) Approving Assumption and
9 Assignment of Leases and Executory Contracts Included in the Sale; (3) Combined With Notice
10 of Bidding Procedures and Request for Approval of Bidding Procedures and Break-Up Fee; and
11 (4) Granting Related Relief ("Sale Motion") currently scheduled for February 5, 2009 at 10:30
12 a.m. has been continued to **February 12, 2009 at 10:30** in Courtroom 5A of the above-entitled
13 Court located at 411 West Fourth Street, Santa Ana, California 92701.

14
15 Dated: January 30, 2009

Respectfully submitted,

16 **SHULMAN HODGES & BASTIAN LLP**

17 /s/ Mark Bradshaw

18 _____
19 Leonard M. Shulman.
20 Mark Bradshaw
21 Attorneys for the Debtor and Debtor in Possession
22 Culinary Adventures, Inc., a Delaware corporation
23
24
25
26
27
28

1 Leonard M. Shulman - Bar No. 126349
Mark Bradshaw - Bar No. 192540
2 **SHULMAN HODGES & BASTIAN LLP**
26632 Towne Centre, Suite 300
3 Foothill Ranch, California 92610-2808
Telephone: (949) 340-3400
4 Facsimile: (949) 340-3000

5 Attorneys for the Debtor and Debtor in Possession
Culinary Adventures, Inc., a Delaware corporation
6
7

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**
10

11 In re

12 **CULINARY ADVENTURES**
13 **INCORPORATED, a Delaware**
14 **corporation,**

15 Debtor.
16
17
18
19
20
21
22
23
24
25
26
27
28

Case No. 8:08-14877 ES

Chapter 11

**NOTICE OF HEARING ON DEBTOR AND DEBTOR IN
POSSESSION MOTION FOR ORDER:**

- (1) **APPROVING THE SALE OF THE ASSETS,
BUSINESS AND PROPERTIES UTILIZED BY
THE DEBTOR IN THE OPERATION OF THE
DEBTOR'S RESTAURANT KNOWN AS
"FRENCH 75 LAGUNA BEACH" FREE AND
CLEAR OF LIENS PURSUANT TO
BANKRUPTCY CODE SECTION 363(b)(1) AND
(f);**
- (2) **APPROVING ASSUMPTION AND
ASSIGNMENT OF LEASES AND EXECUTORY
CONTRACTS INCLUDED IN THE SALE;**
- (3) **COMBINED WITH NOTICE OF BIDDING
PROCEDURES AND REQUEST FOR
APPROVAL OF BIDDING PROCEDURES AND
BREAK-UP FEE;**
- (4) **AND GRANTING RELATED RELIEF;**

Date: February 5, 2009

Time: 10:30 a.m.

Place: Courtroom 5A

Ronald Reagan Federal Building
and United States Courthouse
411 West Fourth Street
Santa Ana, California 92701

1 **TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY**
2 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, AND ALL PARTIES IN**
3 **INTEREST IN THE COUNSEL OF RECORD:**

4 **PLEASE TAKE NOTICE** that a hearing on Culinary Adventures, Inc., a Delaware
5 corporation, the debtor and debtor in possession herein (“Debtor”) Motion for Order: (1)
6 Approving the Sale of the Assets, Business and Properties Utilized by the Debtor in the
7 Operation of the Debtor’s Restaurant known as “French 75 Laguna Beach” Free and Clear of
8 Liens Pursuant to Bankruptcy Code Section 363(b)(1) and (f); (2) Approving Assumption and
9 Assignment of Leases and Executory Contracts Included in the Sale; (3) Combined With Notice
10 of Bidding Procedures and Request for Approval of Bidding Procedures and Break-Up Fee; and
11 (4) Granting Related Relief (“Sale Motion”) has been set for February 5, 2009 at 10:30 a.m. in
12 Courtroom 5A of the above-entitled Court located at 411 West Fourth Street, Santa Ana,
13 California 92701.

14 **The Debtor has received an offer to purchase the assets, business and property**
15 **utilized by the Debtor in the operation of the restaurant known as “French 75 Laguna**
16 **Beach” for consideration consisting of \$1,900,000 to be paid in immediately available funds**
17 **at closing.** A true and correct copy of the Asset Purchase Agreement which governs the sale
18 transaction is attached to the Declaration of Robert Rourke (“Rourke Declaration”) as **Exhibit 1.**

19 The sale transaction will proceed such that the assets related to French 75 Laguna Beach
20 will be sold free and clear of all liens and encumbrances. The Buyer will assume all of Debtor’s
21 rights and obligations arising after the closing under those contracts identified in the Purchase
22 Agreement and the Schedules thereto. The Debtor shall remain liable for all obligations arising
23 under assumed contracts through the closing. Buyer will not be liable for any of the debts,
24 obligations or liabilities of the Debtor other than as assumed by Buyer under the Purchase
25 Agreement.

26 The sale provides a meaningful benefit to the bankruptcy estate (“Estate”) and its
27 creditors. French 75 Laguna Beach is perhaps the Debtor’s best known location and has been a
28 profitable store for the Debtor. However, the going concern value and underlying lease for the

1 French 75 Laguna Beach premises have more value for the Estate through the proposed sale
2 transaction than the Debtor would realize through continued operation of the restaurant. The
3 purchase offer will enhance Debtor's reorganization and so the Debtor has made a business
4 decision that it is in the best interest of the creditors of this Estate that this Sale Motion be
5 approved.

6 The Debtor has determined that it would benefit the Estate by permitting all interested
7 parties to receive information and bid the for the assets related to the operation of French 75
8 Laguna Beach to be sold to the Buyer instead of selling such assets to the Buyer on an exclusive
9 basis. Accordingly, in order to obtain the highest and best offer for the benefit of the creditors of
10 this Estate, the Debtor is utilizing the following bidding procedures ("Bidding Procedures") and
11 requests that Court order approving the sale transaction also provide for approval of the
12 following Bidding Procedures:

13 1. Any potential overbidders for the Business must provide the Seller with a signed
14 Non-Disclosure Agreement in the form approved by the Seller. Parties interested in bidding may
15 receive a copy of the Non-Disclosure Agreement, an executive summary and a copy of the
16 bidding procedures by requesting these from the Seller's counsel.

17 2. The potential overbidders must bid an initial amount of at least ten percent over
18 the Purchase Price offered for the Business by the Purchaser. Minimum bid increments
19 thereafter shall be \$10,000.

20 3. Overbids must be in writing and be received by the Seller and the Seller's
21 counsel, Shulman Hodges & Bastian LLP to the attention of Mark Bradshaw, by no later than
22 fifteen days after the date of service of the Sale Motion.

23 4. Overbids must be accompanied by a deposit ("Overbidder Deposit") in the form
24 of Cash or a Cashier's Check made payable to "Shulman Hodges & Bastian LLP Client Trust
25 Account" in the amount of \$250,000.

26 5. The overbidder must also provide evidence satisfactory to the Seller of having
27 sufficient specifically committed funds to complete the transaction or a lending commitment for
28 the bid amount and such other documentation relevant to the bidder's ability to qualify as the

1 purchaser of the Business and ability to close the sale and immediately and unconditionally pay
2 the winning bid purchase price at closing.

3 6. The overbidder must seek to acquire the Business on terms and conditions not less
4 favorable to the Seller than the terms and conditions to which the Purchaser has agreed to
5 purchase the Business, including but not limited to completing any due diligence by the same
6 deadline as imposed on the Purchaser and closing on the sale of the Business will be completed
7 in the same time parameters as the Purchaser. In addition, the overbidder must make payment of
8 the Purchase Price in the same manner as the Purchaser has agreed to do by the terms of this
9 Agreement.

10 7. If overbids are received, the Seller shall give notice in the manner provided below
11 for Notices upon receipt of any overbids.

12 8. If overbids are received, the final bidding round for the Property shall be held at a
13 Court hearing on the Sale Motion in order to allow all potential bidders the opportunity to
14 overbid and purchase the Business. The Seller will give written notice to the Purchaser of the
15 hearing on the Sale Motion in accordance with applicable bankruptcy law, including but not
16 limited to, giving written notice to the Purchaser of the hearing on the Sale Motion at least
17 twenty-four days in advance of the hearing date. At the final bidding round to be conducted
18 before the Court, if any, the Seller will seek entry of an order, inter alia, authorizing and
19 approving the sale of the Business to the bidder who the Seller, in the exercise of its business
20 judgment, may determine to have made the highest and best offer to purchase the Business,
21 consistent with the Bidding Procedures ("Successful Bidder"). In the event that a hearing is set,
22 the hearing on the Sale Motion may be adjourned or rescheduled without notice other than by an
23 announcement of the adjourned date at the hearing on the Sale Motion.

24 9. In the event Successful Bidder fails to close on the sale of the Property within the
25 time parameters approved by the Court, the Seller shall retain the Successful Bidder's Deposit
26 and will be released from its obligation to sell the Business to the Successful Bidder and the
27 Seller may then sell the Business to the first back-up bidder approved by the Court at the hearing
28 on the Sale Motion ("First Back-Up Bidder").

1 10. In the event First Back-Up Bidder fails to close on the sale of the Business within
2 the time parameters approved by the Court, the Seller shall retain the First Back-Up Bidder's
3 Deposit and will be released from its obligation to sell the Business to the First Back-Up Bidder
4 and the Seller may then sell the Business to the second back-up bidder approved by the Court at
5 the hearing on the Sale Motion ("Second Back-Up Bidder").

6 11. In the event that an overbidder (and not the Buyer who is the "Opening Bid
7 Buyer") is the Successful Bidder for the purchase of the Business, the Seller's Estate will pay the
8 Opening Bid Buyer a break-up fee representing the Opening Bid Buyer's fees and costs
9 associated with the sale of the Business in the amount of \$115,000 ("Break-Up Fee) out of the
10 proceeds of sale. The Break-Up Fee will only be payable in the event that that the sale of the
11 Business closes to a Successful Bidder that is not the Opening Bid Buyer.

12 Thus, based on good business reasons, immediate Court approval of the sale
13 contemplated herein will serve the best interests of the Estate and its creditors and must be
14 granted so that the Debtor do not lose this favorable business opportunity.

15 The Sale Motion is based upon this Notice of the Sale Motion, the Sale Motion and
16 Memorandum of Points and Authorities in Support thereof, the Declaration of Robert Rourke,
17 the pleadings and files in the Debtor's bankruptcy case, and upon such further oral and
18 documentary evidence as may be presented to the Court in support of the Sale Motion.

19 Dated: January 29, 2009

Respectfully submitted,

SHULMAN HODGES & BASTIAN LLP

/s/ Mark Bradshaw

Leonard M. Shulman.

Mark Bradshaw

Attorneys for the Debtor and Debtor in Possession
Culinary Adventures, Inc., a Delaware corporation

1 Leonard M. Shulman - Bar No. 126349
 Mark Bradshaw - Bar No. 192540
 2 **SHULMAN HODGES & BASTIAN LLP**
 26632 Towne Centre, Suite 300
 3 Foothill Ranch, California 92610-2808
 Telephone: (949) 340-3400
 4 Facsimile: (949) 340-3000

5 Attorneys for the Debtor and Debtor in Possession
 Culinary Adventures, Inc., a Delaware corporation
 6
 7

8 **UNITED STATES BANKRUPTCY COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**
 10

11 In re

12 **CULINARY ADVENTURES**
 13 **INCORPORATED, a Delaware**
 corporation,
 14

Debtor.
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

Case No. 8:08-14877 ES

Chapter 11

**NOTICE OF MOTION AND MOTION BY DEBTOR
 AND DEBTOR IN POSSESSION FOR ORDER:**

- (1) APPROVING THE SALE OF THE ASSETS,
 BUSINESS AND PROPERTIES UTILIZED BY
 THE DEBTOR IN THE OPERATION OF THE
 DEBTOR'S RESTAURANT KNOWN AS
 "FRENCH 75 LAGUNA BEACH" FREE AND
 CLEAR OF LIENS PURSUANT TO
 BANKRUPTCY CODE SECTION 363(b)(1) AND
 (f);
- (2) APPROVING ASSUMPTION AND
 ASSIGNMENT OF LEASES AND EXECUTORY
 CONTRACTS INCLUDED IN THE SALE;
- (3) COMBINED WITH NOTICE OF BIDDING
 PROCEDURES AND REQUEST FOR
 APPROVAL OF BIDDING PROCEDURES AND
 BREAK-UP FEE;
- (4) AND GRANTING RELATED RELIEF;

**MEMORANDUM OF POINTS AND AUTHORITIES
 AND DECLARATION OF ROBERT ROURKE IN
 SUPPORT THEREOF**

[No Hearing Set Pursuant to
 Local Bankruptcy Rule 9013-1(o)]

	<u>TABLE OF CONTENTS</u>	Page
I.	NOTICE.....	5
II.	SALE MOTION.....	7
	A. Commencement and Description of the Debtor's Business	7
	B. Description of the Purchase Offer and Proposed Sale Transaction	8
	C. Treatment of the Liens and Encumbrances.....	11
	D. The Proposed Sale Serves the Best Interest of the Estate and its Creditors	12
III.	NOTICE OF BIDDING PROCEDURES.....	13
IV.	AUTHORITIES	15
	A. Court May Approve a Sale of Assets When There is a Good Faith Purchaser.....	15
	1. Sound Business Purpose	15
	2. The Sale Serves the Best Interests of the Estate and Creditors.....	17
	3. Accurate and Reasonable Notice	17
	4. The Sale is Made In Good Faith	17
	B. The Sale Does Not Contravene Policy.....	18
	C. The Proposed Sale Should be Allowed Free and Clear of Liens.....	19
	D. Assumption and Assignment of Executory Contracts and Leases Should Be Authorized	20
	1. Assumption and Assignment Is a Proper Exercise of Debtor's Business Judgment.....	20
	E. The Court Has Authority to Approve the Bidding Procedures.....	21
	1. The Bidding Procedures are Untainted by Self-Dealing.....	22
	2. The Bidding Procedures Encourage Bidding.....	22
	3. The Bidding Procedures Serve the Best Interests of the Estate	22
	4. The Break-Up Fee is Reasonable.....	23
	F. The Court has Authority to Waive the Ten-Day Stay of Sale	25
V.	CONCLUSION.....	25
	DECLARATION OF ROBERT ROURKE.....	27

TABLE OF AUTHORITIES

CASES

<u>Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific R.R. Company</u> , 318 U.S. 523, 550, 63 S. Ct. 727, 742-43 (1943).....	20
<u>In re Brethren Care of South Bend, Inc.</u> , 98 B.R. 927, 934 (Bankr. N.D. Ind. 1989)	18
<u>In re Crown Corporation</u> , 679 F.2d 774 (9th Cir. 1982)	21
<u>In re Crowthers McCall Pattner, Inc.</u> , 114 B.R. 877, 885 (Bankr. S.D.N.Y. 1990).....	15
<u>In re FCX, Inc.</u> , 60 B.R.. 405, 441 (Bankr. E.D.N.C. 1986).....	20
<u>In re Financial News Network</u> , 126 B.R. 152 (D.C., S.D.N.Y. 1991)	23
<u>In re Huang</u> , 23 B.R. 798, 900 (B.A.P. 9th Cir. 1982)	20
<u>In re Hup Industries, Inc.</u> , 140 B.R. 191 (Bankr. N.D. Ohio 1992)	24
<u>In re Institutional Creditors of Continental Airlines, Inc. v. Continental Airlines, Inc. (In re Continental Airlines, Inc.)</u> , 780 F.2d 1223, 1226 (5th Cir. 1986).....	16
<u>In re Integrated Resources, Inc.</u> , 147 B.R. 650, at 659-661 (D.C., S.D.N.Y. 1992).....	23
<u>In re WHET, Inc.</u> , 12 B.R. 743, 750 (Bankr. D. Mass. 1981)	18
<u>In re Wilde Horse Enterprises, Inc.</u> , 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991).....	15, 18
<u>Walter v. Sunwest Bank (In re Walter)</u> , 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1988)	15, 16

STATUTES

Bankruptcy Code Section 105(a)	21
Bankruptcy Code Section 363(b).....	15
Bankruptcy Code Section 363(b)(1)	21
Bankruptcy Code Section 363(f)	19
Bankruptcy Code Section 363(m).....	18
Bankruptcy Code Section 365(a)	20

1	Bankruptcy Code Section 541	15
2	Federal Rule of Bankruptcy Procedure 2002.....	17
3	Federal Rule of Bankruptcy Procedure 2002(c)(1).....	17
4	Federal Rule of Bankruptcy Procedure 6004(g)	25
5	Federal Rules of Bankruptcy Procedure 6004	17
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY JUDGE,**
2 **AND ALL INTERESTED PARTIES:**

3 **I. NOTICE**

4 **PLEASE TAKE NOTICE** that Culinary Adventures, Inc., a Delaware corporation, the
5 debtor and debtor in possession herein (“Debtor”) brings this Motion for Order: (1) Approving
6 the Sale of the Assets, Business and Properties Utilized by the Debtor in the Operation of the
7 Debtor’s Restaurant known as “French 75 Laguna Beach” Free and Clear of Liens Pursuant to
8 Bankruptcy Code Section 363(b)(1) and (f); (2) Approving Assumption and Assignment of
9 Leases and Executory Contracts Included in the Sale; (3) Combined With Notice of Bidding
10 Procedures and Request for Approval of Bidding Procedures and Break-Up Fee; and (4)
11 Granting Related Relief (“Sale Motion”).

12 **The Debtor has received an offer to purchase the assets, business and property**
13 **utilized by the Debtor in the operation of the restaurant known as “French 75 Laguna**
14 **Beach” for consideration consisting of \$1,900,000 to be paid in immediately available funds**
15 **at closing.** A true and correct copy of the Asset Purchase Agreement which governs the sale
16 transaction is attached to the Declaration of Robert Rourke (“Rourke Declaration”) as **Exhibit 1.**

17 The sale transaction will proceed such that the assets related to French 75 Laguna Beach
18 will be sold free and clear of all liens and encumbrances. The Buyer will assume all of Debtor’s
19 rights and obligations arising after the closing under those contracts identified in the Purchase
20 Agreement and the Schedules thereto. The Debtor shall remain liable for all obligations arising
21 under assumed contracts through the closing. Buyer will not be liable for any of the debts,
22 obligations or liabilities of the Debtor other than as assumed by Buyer under the Purchase
23 Agreement.

24 The sale provides a meaningful benefit to the bankruptcy estate (“Estate”) and its
25 creditors. French 75 Laguna Beach is perhaps the Debtor’s best known location and has been a
26 profitable store for the Debtor. However, the going concern value and underlying lease for the
27 French 75 Laguna Beach premises have more value for the Estate through the proposed sale
28 transaction than the Debtor would realize through continued operation of the restaurant. The

1 purchase offer will enhance Debtor's reorganization and so the Debtor has made a business
2 decision that it is in the best interest of the creditors of this Estate that this Sale Motion be
3 approved.

4 Thus, based on good business reasons, immediate Court approval of the sale
5 contemplated herein will serve the best interests of the Estate and its creditors and must be
6 granted so that the Debtor do not lose this favorable business opportunity.

7 The Sale Motion is based upon this Notice of the Sale Motion, the Sale Motion and
8 Memorandum of Points and Authorities in Support thereof, the Declaration of Robert Rourke,
9 the pleadings and files in the Debtor's bankruptcy case, and upon such further oral and
10 documentary evidence as may be presented to the Court in support of the Sale Motion.

11 **PLEASE TAKE FURTHER NOTICE** that pursuant to Local Bankruptcy Rule
12 9013-1(o)(1), any response and request for hearing on the Sale Motion must be filed with the
13 Clerk of the above-entitled Court and a copy served on Shulman Hodges & Bastian LLP to the
14 attention of Mark Bradshaw at the address indicated above and the Office of the United States
15 Trustee, Ronald Reagan Federal Building and United States Courthouse, 411 West Fourth Street,
16 #9041, Santa Ana, California 92701-8000 within fifteen days after the date of service of this
17 notice.

18 **PLEASE TAKE FURTHER NOTICE** that failure to file a timely response may be
19 deemed as consent to the relief requested in the Sale Motion. **SEE, LOCAL BANKRUPTCY**
20 **RULE 9013-1(h).**

21 Dated: January 15, 2009

Respectfully submitted,

SHULMAN HODGES & BASTIAN LLP

/s/ Mark Bradshaw

25 Leonard M. Shulman.
26 Mark Bradshaw
27 Attorneys for the Debtor and Debtor in Possession
28 Culinary Adventures, Inc., a Delaware corporation

II. SALE MOTION

In support of the Sale Motion, the Debtor respectfully represents as follows:

A. Commencement and Description of the Debtor's Business

The Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on August 14, 2008 ("Petition Date"). The Debtor is continuing in the operation and management of its business pursuant to Bankruptcy Code Sections 1107 and 1108.

The Debtor is based in Newport Beach, California and is owned 100% by Culinary Holdings, Inc. The Debtor owns four restaurants and prior to the Petition Date was the managing member of four limited liability companies which collectively owned five additional restaurants – all located in Orange County and Los Angeles County as follows:

<u>Restaurant</u>	<u>Owned by an LLC or by Culinary Adventures, Inc.</u>
Wilhelm's Chophouse 13290 Jamboree Rd. Irvine, CA 92602	French 75 Marketplace, LLC, a Delaware limited liability company
French 75 Newport Beach 327 Newport Center Dr. Newport Beach, CA 92660	French 75 Newport Beach, LLC, a Delaware limited liability company (formerly known as Rouge Bistro LLC, a Delaware limited liability company)
French 75 Laguna Beach 1464 South Coast Hwy Laguna Beach, CA 9265	Culinary Adventures, Inc.
Savannah 3400 West Olive Ave. Burbank, CA 91505	French 75 LACO, LLC, a Delaware limited liability company
Savannah 10250 Santa Monica Blvd. Los Angeles, CA 90067 (Century City)	French 75 LACO, LLC, a Delaware limited liability company
Savannah Supper Club 655 Anton Blvd. Costa Mesa, CA 92626	Chat Noir LLC, a Delaware limited liability company
Savannah at the Beach 315 Pacific Coast Hwy Huntington Beach, CA 92648	Culinary Adventures, Inc.
Savannah Chop House 32441 Golden Lantern Laguna Niguel, CA 92677	Culinary Adventures, Inc.
Sorrento Grille 370 Glenneyre St. Laguna Beach, CA 92651	Culinary Adventures, Inc.

1 The Debtor is the employer for all of the employees of the restaurants and is the tenant or
2 guarantor for each of the real property leases related to the restaurants.

3 Substantially concurrent with the Petition Date, the Debtor closed Savannah Burbank,
4 Savannah Century City, and Wilhelm's Chophouse (in Irvine). Continuing losses at each of
5 these locations made the decision to close inevitable.

6 Also substantially concurrent with the Petition Date, the Debtor negotiated with the
7 landlord for the Savannah Supper Club (in Costa Mesa). Pursuant to a lease amendment with
8 Chat Noir LLC (the tenant), the landlord agreed to defer all rent and related expenses from
9 August 2008 until March 2009 and to waive such deferred rent if the tenant remained current
10 under the lease.

11 On September 26, 2008, the Debtor filed a motion to approve the sale of the assets,
12 business and properties utilized by the Debtor in the operation of the Debtor's restaurant known
13 as "Sorrento Grille". That motion was granted and the Debtor is in the process of finalizing the
14 sale details.

15 Although the Debtor has been pressured by many of the same forces compelling other
16 recent restaurant bankruptcy filings, the Debtor has an excellent reputation and product and
17 intends to maintain operations at its profitable locations. The Debtor is also continuing its efforts
18 to reduce costs in light of uncontrollable expenses such as food. The Debtor has reduced its
19 corporate staff, is working to reduce the size and expense of its corporate headquarters, and has
20 closed unprofitable stores as discussed herein.

21 The Debtor intends to file its proposed plan of reorganization and disclosure statement
22 describing the plan by January 16, 2009 (the deadline previously set by the Court).

23 **B. Description of the Purchase Offer and Proposed Sale Transaction**

24 Subject to Court approval, the Debtor has received an offer from F75 Laguna Beach,
25 LLC ("Buyer" or "Purchaser") for the purchase of French 75 Laguna Beach pursuant to the
26 terms and conditions as set forth in a certain Asset Purchase Agreement (the "Agreement" or
27 "Purchase Agreement") and a certain Interim Operating Addendum.

28 For the sake of brevity, the Purchase Agreement is not fully described herein. However,

1 a copy of the Purchase Agreement is attached to the Rourke Declaration as **Exhibit 1** and a copy
2 of the Interim Operating Addendum is attached as **Exhibit 2**. Also, copies of the Purchase
3 Agreement and Interim Operating Addendum may be obtained by contacting Debtor's counsel at
4 the address indicated on the first page of this Sale Motion. The principal terms of the Purchase
5 Agreement and Interim Operating Addendum are as follows (a times, the Debtor is referred as
6 the "Seller" and the Buyer is referred to as "Purchaser" in the following summary):

7 1. The Buyer will purchase the assets, business and property utilized by the Debtor
8 in the operation of the restaurant known as "French 75 Laguna Beach".

9 2. The consideration for the purchase transaction will consist of \$1,900,000
10 ("Purchase Price") to be paid in immediately available funds at closing. The Purchase Price plus
11 all other amounts payable under the Agreement by Purchaser (including prorations, deposits
12 under the Assigned Contracts and Taxes for which Purchaser is responsible and one-half of all
escrow expenses), and less the Deposit (\$250,000) shall be deposited with Escrow Holder via
wire transfer or other means at least 2 business days prior to the Closing and Escrow Holder shall
release the Purchase Price (subject to Section 2.1(c)), less Seller's share of prorations and closing
expenses, to Seller immediately upon the Closing.

13 3. \$100,000 of the Deposit shall remain with the Escrow Holder for a period of
14 twelve months following the Closing ("Escrow Termination Date") as security for any breach of
15 Seller's representation, warranties, covenants and indemnification obligations under the
16 Agreement. In the event that Purchaser has a claim against the funds held by Escrow Holder,
17 Purchaser shall provide written notice ("Escrow Claim Notice") to Seller and Escrow Holder
18 prior to the Escrow Termination Date stating the nature and basis of such claim in reasonable
19 detail, and specifying the amount of damages, if such amount can be reasonably estimated at the
20 time of the notice. If Seller does not dispute such claim by written notice to Escrow Holder
21 within 30 days of the Escrow Claim Notice, then the Escrow Holder shall release to Purchaser
the amount of such funds requested in the Escrow Claim Notice. If Seller does send a written
dispute notice of the Escrow Claim Notice within such 30 day period, then Escrow Holder shall
continue to hold all of the escrowed funds until a final resolution among the parties is agreed to
or otherwise finally adjudicated. If Purchaser does not send any Escrow Claim Notice prior to
the Escrow Termination Date, then all escrowed fund shall be released to Seller.

22 4. Seller and Purchaser shall each be responsible for half of any sales or transfer
23 taxes due in connection with the sale for which an exemption is not available

24 5. Not later than ten days prior to the Closing Date, Seller shall prepare and deliver
25 to Buyer for their review and consideration a schedule (the "Allocation Schedule") allocating the
26 Purchase Price among the various assets comprising the Property in accordance with Treasury
27 Regulation 1.1060-1 (or any comparable provisions of state or local tax law) or any successor
provision and consistent with the breakdown between the License and other items purchased
hereunder. If Buyer disagrees with or raises objections to the Allocation Schedule, Buyer and
Seller will negotiate in good faith to resolve such objections. If the parties are able to agree upon
the allocation of the Purchase Price, Buyer and Seller shall report and file all tax returns
(including any amended tax returns and claims for refund) consistent with such mutually agreed
Purchase Price allocation, and shall take no position contrary thereto or inconsistent therewith
(including any audits or examinations by any taxing authority or any other proceedings)

28 6. The sale transaction will proceed such that the assets related to French 75 Laguna
Beach will be sold free and clear of all liens and encumbrances. The Buyer will assume all of

1 Debtor's rights and obligations arising after the closing under those contracts identified in the
2 Purchase Agreement and the Schedules thereto. The Debtor shall remain liable for all
3 obligations arising under assumed contracts through the closing. Buyer will not be liable for any
of the debts, obligations or liabilities of the Debtor other than as assumed by Buyer under the
Purchase Agreement.

4 7. The existing liquor license for the business shall be transferred in accordance with
5 the rules and regulations of the Department of Alcoholic Beverage Control. The liquor license is
6 held by Culinary Holdings, Inc. who will transfer same and assist with the transfer of same, and
who joins in the Agreement for this purpose.

7 8. The consummation of the transactions contemplated by the Purchase Agreement
8 ("Closing") shall take place at the offices of ABC Escrow, 17383 Sunset Boulevard, Suite A310,
Pacific Palisades, CA 90272, Attn: Amy Kwak ("Escrow Holder"), on or before February 27,
2009 ("Closing Date").

9 9. Purchaser agrees and acknowledges that it has received copies of all Assigned
10 Contracts. Furthermore, Purchaser acknowledges, represents, warrants and agrees, to and with
11 Seller, that, except as specifically set forth in the Agreement (A) Purchaser is purchasing the
12 Business and Acquired Assets in an "As-Is, Where-Is" condition as of the date of the Closing
13 with respect to any facts, circumstances, conditions and defects; (B) Seller has no obligation to
14 repair or correct any such facts, circumstances, conditions or defects or compensate Purchaser
15 for same; (C) by the Closing, Purchaser shall have undertaken all such inspections and
16 examinations as Purchaser deems necessary or appropriate under the circumstances, and that
17 based upon same, Purchaser is and will be relying strictly and solely upon such inspections and
18 examinations and the advice and counsel of its agents and officers, and Purchaser is and will be
19 fully satisfied that the Purchase Price is fair and adequate consideration for the Business and
20 Acquired Assets; (D) neither Seller nor any representative, member, agent, employee, property
21 manager, broker, principal, partner, affiliate, or consultant of Seller is making or has made any
22 warranty or representation with respect to all or any part of the Business or Acquired Assets
23 (including, but not limited to, any matters contained in documents made available or delivered to
24 Purchaser in connection with the Agreement) as an inducement to Purchaser to enter into the
Agreement and thereafter to purchase the Business and Acquired Assets or for any other
purpose, and Purchaser hereby expressly disclaims (on behalf of itself and any party affiliated
with or related to Purchaser) any and all representations and warranties not specifically set forth
in the Agreement; and (E) by reason of all of the foregoing, Purchaser shall assume the full risk
of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the
Business and Acquired Assets, and Purchaser hereby expressly and unconditionally waives and
releases Seller and all of its parents, members, subsidiaries, affiliates, partners, officers,
directors, shareholders, agents and employees, and their respective successors, heirs and assigns
and each of them (individually and collectively, the "Released Parties") from any and all rights
and claims against Seller and/or the Released Parties with respect to the Business and Acquired
Assets including, without limitation, the condition, valuation, marketability, purpose or utility of
the Business and Acquired Assets; provided, that, this release shall not release Seller from any
Liability arising out of Seller's express representations and warranties hereunder, or the
indemnification obligations of Seller as set forth in the Agreement.

25 10. For a period of five (5) years from and after the Closing Date, so long as the
26 Business is conducted under the name French 75 or a derivative thereof, Seller agrees that John
27 Martin, the primary shareholder of Seller, and Seller, shall not operate or engage in, directly or
28 indirectly, whether as a principal, agent, manager, employee, owner, member, partner,
stockholder, director or officer of a corporation, trustee, consultant, or in any other capacity
whatsoever, any fine dining restaurant within a radius of three miles from the current location of
the Business. Expressly excluded from the restrictions of sub-part (i) of this paragraph shall be
the existing Savannah Chophouse restaurant in Laguna Niguel, Sorrento Grill in Laguna Beach

1 and the French 75 restaurant in Newport Beach. Such restaurants, along with other restaurants
2 outside of the three-mile non-compete radius will be operated by Seller and may be in
3 competition with the Business and can and will solicit customers and encourage customers to
patronize such Seller restaurants, including but not limited to, through Seller's continuing use of
the customer data base.

4 11. Seller has issued and outstanding gift cards and prepaid cards for the Business.
5 Purchaser may continue to honor such cards and shall submit monthly invoices to Seller for all
6 such amounts. Within 5 days after receipt of such invoices, Seller shall remit payment to
7 Purchaser, dollar for dollar, for all amounts redeemed on such cards at the Business for a period
8 of one year following the Closing. In the event Seller does not remit payment as provided in the
Agreement, in addition to Purchaser's other rights, Purchaser shall also have the right to seek
reimbursement for such amounts out of the funds held by the Escrow Holder. Seller shall have
the ongoing right to audit Buyer's report of gift card purchases.

9 12. Specifically excluded from gift cards subject to reimbursement are those
10 promotional cards given out (without charge) by Seller without reimbursement for the purpose of
encouraging patronage of the Business. These cards are commonly referred to as "Green Cards"
and are commonly given to concierges' and others likely to direct customers to the Business.

11 13. Assets included in the sale transaction include All of Seller's right, title and
12 interest in and to the tenant's interest, including all options, under that certain Lease dated
13 December 1, 2004 by and between Robert E. French, as Trustee of the Ursula French Trust
14 Dated April 10, 1986 ("Landlord" thereunder) and Seller ("Tenant" thereunder), with respect to
15 the premises commonly known as 1464 South Coast Highway, Laguna Beach, California.
16 Purchaser shall use commercially reasonable efforts to obtain Landlord's consent to assign the
17 Lease to Purchaser, contingent upon Landlord agreeing to one additional five year option to
extend the Lease, and making all options assignable on the same terms as assignment of the
Lease. Purchaser's commercially reasonable efforts shall include the execution of a personal
guaranty by Kenneth A. Johnson (the sole owner of Purchaser), reasonable modifications to the
permitted use restriction of the Lease and payment of attorney and accounting fees (in an amount
to be approved by Purchaser) for Landlord's review of proposed assignment.

18 14. Through the Interim Operating Addendum, the sale transaction also provides for
19 an Interim Operating Period whereby the Buyer shall manage French 75 Laguna Beach
commencing as of the later of January 29, 2009 or the date upon which the Buyer receives a
Temporary Liquor License for the restaurant premises and shall terminate upon the Closing.

20 15. During the Interim Operating Period, the Buyer shall manage the premises, be
21 responsible for the operation of the Business, bear all risks associated with the Premises
22 including but not limited to, equipment failure including requiring repair or replacement thereof,
23 and damage to the premises. Buyer shall be responsible for compliance of the Premises
24 including the operation of the Business with all applicable laws, rules, and regulations (including
25 employment law matters) and bear all costs and other consequences associated with any
violation thereof. During the Interim Operating Period it is the intention of the parties that as
nearly as practical the Buyer shall bear all the burdens, risks, rewards and benefits of the
premises and the Business operations controlling and retaining all revenue, bearing or
reimbursing all expenses and retaining all profits or bearing all losses.

26 **C. Treatment of the Liens and Encumbrances**

27 The sale transaction will proceed such that the assets related to French 75 Laguna Beach
28 will be sold free and clear of all liens, claims, interests and encumbrances. The Buyer will

1 assume all of Debtor's rights and obligations arising after the closing under those contracts (and
2 only those contracts) listed on in the Purchase Agreement and the Schedules attached thereto;
3 provided that Buyer will not be obligated to assume any such contract for which assignment to
4 the Buyer requires the consent of the other party to such contract unless such consent has been
5 obtained in writing and delivered to Buyer on or before the closing of the transaction. The
6 Debtor shall remain liable for all obligations arising under such contracts through the closing. It
7 is expressly understood and agreed that Buyer will not be liable for any of the debts, obligations
8 or liabilities of Seller of any kind other than those specifically assumed by Buyer under the
9 Purchase Agreement and that Debtor shall remain liable and responsible for any all of its debts,
10 obligations and liabilities not expressly assumed by Buyer under the Purchase Agreement.

11 GE Capital Franchise Corporation ("GE") has a lien on substantially all of the Debtor's
12 assets including certain personal property and furniture, fixtures and equipment associated with
13 the French 75 Laguna Beach location. GE is owed approximately \$1.1 million and its lien is also
14 secured by other assets/stores owned by the Debtor. Credit Cash LLC ("Credit Cash") has a lien
15 on certain assets of the Debtor and is owed approximately \$450,000. Pursuant to this Sale
16 Motion, the lien of GE and the lien of Credit Cash will attach to the proceeds from the sale of
17 French 75 Laguna Beach in the same priority as they held prior to the Petition Date. Pursuant to
18 this Sale Motion, the Debtor will be authorized to pay GE and Credit Cash from the sale
19 proceeds prior to confirmation of the Plan.

20 **D. The Proposed Sale Serves the Best Interest of the Estate and its Creditors**

21 The Debtor has made a business decision that it is in the best interest of the creditors of
22 this Estate that this Sale Motion be approved. The sale provides substantial benefit to the Estate
23 and its creditors.

24 The sale provides a meaningful benefit to the Estate and its creditors. French 75 Laguna
25 Beach is perhaps the Debtor's best known location and has been a profitable store for the Debtor.
26 However, the going concern value and underlying lease for the French 75 Laguna Beach
27 premises have more value for the Estate through the proposed sale transaction than the Debtor
28 would realize through continued operation of the restaurant. The purchase offer will enhance

1 Debtor's reorganization and so the Debtor has made a business decision that it is in the best
2 interest of the creditors of this Estate that this Sale Motion be approved.

3 **III. NOTICE OF BIDDING PROCEDURES**

4 The Debtor has determined that it would benefit the Estate by permitting all interested
5 parties to receive information and bid the for the assets related to the operation of French 75
6 Laguna Beach to be sold to the Buyer instead of selling such assets to the Buyer on an exclusive
7 basis. Accordingly, in order to obtain the highest and best offer for the benefit of the creditors of
8 this Estate, the Debtor is utilizing the following bidding procedures ("Bidding Procedures") and
9 requests that Court order approving the sale transaction also provide for approval of the
10 following Bidding Procedures:

11 1. Any potential overbidders for the Business must provide the Seller with a signed
12 Non-Disclosure Agreement in the form approved by the Seller. Parties interested in bidding may
13 receive a copy of the Non-Disclosure Agreement, an executive summary and a copy of the
14 bidding procedures by requesting these from the Seller's counsel.

15 2. The potential overbidders must bid an initial amount of at least ten percent over
16 the Purchase Price offered for the Business by the Purchaser. Minimum bid increments
17 thereafter shall be \$10,000.

18 3. Overbids must be in writing and be received by the Seller and the Seller's
19 counsel, Shulman Hodges & Bastian LLP to the attention of Mark Bradshaw, by no later than
20 fifteen days after the date of service of the Sale Motion.

21 4. Overbids must be accompanied by a deposit ("Overbidder Deposit") in the form
22 of Cash or a Cashier's Check made payable to "Shulman Hodges & Bastian LLP Client Trust
23 Account" in the amount of \$250,000.

24 5. The overbidder must also provide evidence satisfactory to the Seller of having
25 sufficient specifically committed funds to complete the transaction or a lending commitment for
26 the bid amount and such other documentation relevant to the bidder's ability to qualify as the
27 purchaser of the Business and ability to close the sale and immediately and unconditionally pay
28 the winning bid purchase price at closing.

1 6. The overbidder must seek to acquire the Business on terms and conditions not less
2 favorable to the Seller than the terms and conditions to which the Purchaser has agreed to
3 purchase the Business, including but not limited to completing any due diligence by the same
4 deadline as imposed on the Purchaser and closing on the sale of the Business will be completed
5 in the same time parameters as the Purchaser. In addition, the overbidder must make payment of
6 the Purchase Price in the same manner as the Purchaser has agreed to do by the terms of this
7 Agreement.

8 7. If overbids are received, the Seller shall give notice in the manner provided below
9 for Notices upon receipt of any overbids.

10 8. If overbids are received, the final bidding round for the Property shall be held at a
11 Court hearing on the Sale Motion in order to allow all potential bidders the opportunity to
12 overbid and purchase the Business. The Seller will give written notice to the Purchaser of the
13 hearing on the Sale Motion in accordance with applicable bankruptcy law, including but not
14 limited to, giving written notice to the Purchaser of the hearing on the Sale Motion at least
15 twenty-four days in advance of the hearing date. At the final bidding round to be conducted
16 before the Court, if any, the Seller will seek entry of an order, inter alia, authorizing and
17 approving the sale of the Business to the bidder who the Seller, in the exercise of its business
18 judgment, may determine to have made the highest and best offer to purchase the Business,
19 consistent with the Bidding Procedures ("Successful Bidder"). In the event that a hearing is set,
20 the hearing on the Sale Motion may be adjourned or rescheduled without notice other than by an
21 announcement of the adjourned date at the hearing on the Sale Motion.

22 9. In the event Successful Bidder fails to close on the sale of the Property within the
23 time parameters approved by the Court, the Seller shall retain the Successful Bidder's Deposit
24 and will be released from its obligation to sell the Business to the Successful Bidder and the
25 Seller may then sell the Business to the first back-up bidder approved by the Court at the hearing
26 on the Sale Motion ("First Back-Up Bidder").

27 10. In the event First Back-Up Bidder fails to close on the sale of the Business within
28 the time parameters approved by the Court, the Seller shall retain the First Back-Up Bidder's

1 Deposit and will be released from its obligation to sell the Business to the First Back-Up Bidder
2 and the Seller may then sell the Business to the second back-up bidder approved by the Court at
3 the hearing on the Sale Motion ("Second Back-Up Bidder").

4 11. In the event that an overbidder (and not the Buyer who is the "Opening Bid
5 Buyer") is the Successful Bidder for the purchase of the Business, the Seller's Estate will pay the
6 Opening Bid Buyer a break-up fee representing the Opening Bid Buyer's fees and costs
7 associated with the sale of the Business in the amount of \$115,000 ("Break-Up Fee) out of the
8 proceeds of sale. The Break-Up Fee will only be payable in the event that that the sale of the
9 Business closes to a Successful Bidder that is not the Opening Bid Buyer.

10 IV. AUTHORITIES

11 A. Court May Approve a Sale of Assets When There is a Good Faith Purchaser

12 Pursuant to Bankruptcy Code Section 541, upon the commencement of a case under
13 Chapter 11, an estate is created which includes all legal and equitable interest of the debtor in
14 property at the commencement of the case. The Debtor, after notice and hearing, may sell
15 property of the Estate. Bankruptcy Code Section 363(b). The standards to establish are that
16 there is a sound business purpose for the sale, that the sale is in the best interests of the estate,
17 i.e., the sale is for a fair and reasonable price, that there is accurate and reasonable notice to
18 creditors and that the sale is made in good faith. In re Wilde Horse Enterprises, Inc., 136 B.R.
19 830, 841 (Bankr. C.D. Cal. 1991); In re Lionel Corp., 722 F.2d 1063, 1069 (2d Cir. 1983).
20 Business justification would include the need to close a sale to one of very few serious bidders
21 where an asset has been extensively shopped and a delay could jeopardize the transaction. See,
22 e.g., In re Crowthers McCall Pattner, Inc., 114 B.R. 877, 885 (Bankr. S.D.N.Y. 1990) (extreme
23 difficulty finding a buyer justified merger when buyer found). The Debtor's proposed sale
24 meets the foregoing criteria.

25 1. Sound Business Purpose

26 There must be some articulated business purpose for a proposed sale outside the ordinary
27 course of business. Walter v. Sunwest Bank (In re Walter), 83 B.R. 14, 19-20 (B.A.P. 9th Cir.
28 1988). The standards for whether a sale is supported by a sound business purpose was set forth

1 in In re Institutional Creditors of Continental Airlines, Inc. v. Continental Airlines, Inc. (In re
2 Continental Airlines, Inc.), 780 F.2d 1223, 1226 (5th Cir. 1986), wherein the Fifth Circuit
3 stated:

4 Whether the proffered business justification is sufficient depends
5 on the case. As the second Circuit held in Lionel, the bankruptcy
6 judge should consider all salient factors pertaining to the
7 proceeding and, accordingly, act to further the diverse interest of
8 the debtor, creditors and equity holders, alike. He might, for
9 example, look to such relevant factors as the proportionate value of
10 the asset to the estate as a whole, the amount of elapsed time since
11 the filing, the likelihood that a plan of reorganization will be
12 proposed and confirmed in the near future, the effect of the
13 proposed disposition on future plans of reorganization, the
14 proceeds to be obtained from the disposition vis-a-vis any
15 appraisals of the property, which of the alternatives use, sale or
16 lease proposal envisions and, most importantly perhaps, whether
17 the assets is increasing or decreasing in value. This list is not
18 intended to be exclusive, but merely to provide guidance to the
19 bankruptcy judge.

20 Id., citing Lionel Corp. 722 F.2d at 1071.

21 The standards set forth in Continental Airlines were adopted by the Ninth Circuit
22 Bankruptcy Appellate Panel. Walter 83 B.R. at 19-20.

23 Here, the facts surrounding the sale support the Debtor's business decision that the
24 proposed sale is in the best interests of the Estate and its creditors. The sale provides a
25 meaningful benefit to the Estate and its creditors. Although French 75 Laguna Beach has been a
26 profitable store for the Debtor, the ongoing expenses of operating including food, labor and
27 insurance together with the current economic conditions favor a sale of the business rather than
28 continued operation. The Debtor believes that the Buyer is financially sound and that the
proposed purchase price is fair such that the Estate will be better served by a sale of this store
than it would be keeping it open and conducting business. The Debtor's reorganization strategy
works whether the store is sold or remains open. Nonetheless, there is less risk and a greater
return for creditors if the sale option is pursued.

 The sale transaction is sound because the sale provides substantial value to the Estate
(\$1,900,000 cash) and the Debtor's reorganization.

1 **2. The Sale Serves the Best Interests of the Estate and Creditors**

2 The Debtor believes that it would be in the best interests of the Estate and its creditors to
3 sign the Purchase Agreement and transfer the assets to the Buyer. If the sale is approved, the
4 Debtor will generate \$1,900,000. Moreover, given the current economy there is no assurance
5 that the Debtor will be able to continue to operate the restaurant at a profit. The sale provides
6 certainty and substantial cash for the Estate and its creditors. As such, through this Sale Motion,
7 the Debtor will preserve a benefit for creditors which may be diminished if the Sale Motion is
8 not granted. Thus, the Debtor has made a business decision that it is in the best interest of the
9 creditors of this Estate that this Sale Motion be approved.

10 **3. Accurate and Reasonable Notice**

11 It is expected that under the circumstances of this case, notice of this Sale Motion will
12 satisfy the requirements for accurate and reasonable notice and will be appropriate under the
13 circumstances of this case

14 The notice requirements for sales outside the ordinary course are set forth in Federal
15 Rules of Bankruptcy Procedure ("FRBP") 6004 and 2002. The notice must include the time and
16 place of any public sale, the terms and conditions of any private sale, the time fixed for filing on
17 objections and a general description of the property. Fed. R. Bankr. P. 2002(c)(1).

18 The Debtor shall provide notice of the proposed sale to creditors in the manner prescribed
19 by Orders of this Court. This Sale Motion which will be served as directed by Orders of this
20 Court includes a summary of the terms and conditions of the proposed sale and a general
21 description of the assets to be sold. As directed by Orders of this Court, the Debtor will provide
22 notice of hearing on the Sale Motion to creditors and the time fixed for filing objections. The
23 Debtor submits that the notice requirements will have been satisfied, thereby creditors and
24 parties in interest an opportunity to object to the sale. Hence, no further notice should be
25 necessary.

26 **4. The Sale is Made In Good Faith**

27 The proposed sale will be brought in good faith and will be negotiated on an "arms
28 length" basis.

1 The court, in Wilde Horse Enterprises, set forth the factors in considering whether a
2 transaction is in good faith. The court stated:

3
4 'Good faith' encompasses fair value, and further speaks to the
5 integrity of the transaction. Typical 'bad faith' or misconduct,
6 would include collusion between the seller and buyer, or any
7 attempt to take unfair advantage of other potential purchasers. . . .
8 And, with respect to making such determinations, the court and
9 creditors must be provided with sufficient information to allow
10 them to take a position on the proposed sale. (citations omitted)

11 Id. at 842.

12 In the present case, the negotiation of the proposed sale will be an arms-length
13 transaction. The negotiations with the Buyer is anticipated to result in an offer to sell the that
14 will have benefit to the Estate. As set forth in the Notice of the Sale Motion and the Sale
15 Motion, the creditors will have been provided with sufficient notice of the sale. Accordingly, the
16 sale is in good faith and should be approved. The Debtor requests such a finding pursuant to
17 Bankruptcy Code Section 363(m).

18 **B. The Sale Does Not Contravene Policy**

19 As early as 1981, a court held that:

20
21 As to whether the sale by a trustee of all of the debtor's assets must
22 take place in the context of a confirmed reorganization plan, the
23 case law again is clear that there is nothing objectionable about a
24 sale of all the assets outside of a Chapter 11 plan.

25 In re WHET, Inc., 12 B.R. 743, 750 (Bankr. D. Mass. 1981).

26 As a result of their financial condition, the Debtor believes the best option is the orderly
27 sale of its interests in the assets related to French 75 Laguna Beach based on the beneficial offer
28 received. In essence, based on good business reasons, including the economics of the Debtor's
situation, it is in the best interest of the creditors of this Estate that this Sale Motion be approved.

Accordingly, the sale does not conflict with underlying bankruptcy policy. See, In re
Brethren Care of South Bend, Inc., 98 B.R. 927, 934 (Bankr. N.D. Ind. 1989) (certainty of future
for tenants was good business reason and only feasible plan was liquidation, so 363 sale
approved despite pending plan of reorganization).

1 **C. The Proposed Sale Should be Allowed Free and Clear of Liens**

2 Bankruptcy Code Section 363(f) allows a debtor to sell property of the bankruptcy estate
3 "free and clear of any interest in such property of an entity," if any one of the following five
4 conditions is met:

- 5 1. applicable non-bankruptcy law permits a sale of such property free
and clear of such interest;
- 6 2. such entity consents;
- 7 3. such interest is a lien and the price at which such property is to be
8 sold is greater than the aggregate value of all liens on such
property;
- 9 4. such interest is in bona fide dispute;
- 10 5. or such entity could be compelled, in a legal or equitable
proceeding, to accept money satisfaction of such interest.

11 Bankruptcy Code Section 363(f).

12 Section 363(f) is written in the disjunctive and thus only one of the enumerated
13 conditions needs to be satisfied for Court approval to be appropriate. Here, the Debtor seeks to
14 the sell the assets related to French 75 Laguna Beach free and clear of liens and encumbrances.
15 From and after the closing of the transaction, the Buyer will assume all of Debtor's rights and
16 obligations arising after the closing under those contracts (and only those contracts) listed on
17 Scheduled to the underlying Purchase Agreement; provided that Buyer will not be obligated to
18 assume any such contract for which assignment to the Buyer requires the consent of the other
19 party to such contract unless such consent has been obtained in writing and delivered to Buyer on
20 or before the closing of the transaction. The Debtor shall remain liable for all obligations arising
21 under such contracts through the closing. It is expressly understood and agreed that Buyer will
22 not be liable for any of the debts, obligations or liabilities of Seller of any kind other than those
23 specifically assumed by Buyer under the Purchase Agreement and that Debtor shall remain liable
24 and responsible for any all of its debts, obligations and liabilities not expressly assumed by
25 Buyer under the Purchase Agreement.

26 The Debtor is proposing to sell French 75 Laguna Beach for more than the amount of the
27 liens against it. Moreover, lienholder GE has additional collateral besides the assets related to
28

1 French 75 Laguna Beach. The Debtor proposes to pay GE and Credit Cash in part from the sale
2 proceeds as discussed herein. As such, approval of this Sale Motion pursuant to 363(f) is
3 proper.

4 Based on the terms of the sale, the Debtor contemplates that no secured parties will
5 object to the sale. As such, the Debtor seeks to sell the assets related to French 75 Laguna Beach
6 pursuant to Bankruptcy Code Section 363(f)(2).

7 **D. Assumption and Assignment of Executory Contracts and Leases Should Be**
8 **Authorized**

9 Bankruptcy Code Section 365(a) provides that:

10
11 " . . . the trustee, subject to the court's approval, may assume or
reject any executory contract or unexpired lease of the debtor."

12 The Debtor seeks Court authority to assume and assign the contracts listed on the
13 Schedules to the Purchase Agreement that are included in the sale as consideration for the
14 purchase price to be paid by the Buyer to the Estate.

15 **1. Assumption and Assignment Is a Proper Exercise of Debtor's Business**

16 **Judgment**

17 A trustee satisfies the "business judgment" test when the trustee decides, in good faith,
18 that assumption or rejection may benefit the estate and its creditors, and may preserve assets for
19 the estate. See, Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific R.R.
20 Company, 318 U.S. 523, 550, 63 S. Ct. 727, 742-43 (1943); In re Huang, 23 B.R. 798, 900
21 (B.A.P. 9th Cir. 1982); In re FCX, Inc., 60 B.R. 405, 441 (Bankr. E.D.N.C. 1986).

22 In the present case, the Debtor has exercised sound business judgment on behalf of the
23 Estate in electing to assume and assign contracts that are ultimately included in the sale. It is
24 anticipated that the Buyer will intend to honor the contracts relating to the assets ultimately
25 included in the sale pursuant to the same terms and conditions as entered into by the Debtor. The
26 Buyer must have legal authority to enforce performance under such executory contracts and
27

28

1 leases. Likewise, the other parties to the contracts listed on Schedules attached to the Purchase
2 Agreement must have a basis for seeking the Buyer's performance.

3 To the extent necessary, the Debtor shall enter into stipulations for assumption and
4 assignment that will cover the cure of all payment defaults of the contracts included in the sale so
5 that such contracts may be assumed and assigned to the Buyer.

6 Accordingly, the Debtor requests that the Court approve assumption and assignment of
7 the listed on Schedules attached to the Purchase Agreement that are ultimately included in the
8 sale.

9 **E. The Court Has Authority to Approve the Bidding Procedures**

10 Implementation of the Bidding Procedures is an action outside of the ordinary course of
11 the business. Bankruptcy Code Section 363(b)(1) provides that a trustee "after notice and
12 hearing, may use, sell or lease, other than in the ordinary course of business, property of the
13 estate." Furthermore, under Bankruptcy Code Section 105(a), "[t]he court may issue any order,
14 process, or judgment that is necessary or appropriate to carry out the provisions of this title."
15 Thus, pursuant to Bankruptcy Code Sections 363(b)(1) and 105(a), this Court may authorize the
16 implementation of Bidding Procedures.

17 The Ninth Circuit, in a case under the Bankruptcy Act, recognized the power of a
18 bankruptcy court to issue orders determining the terms and conditions for overbids with respect
19 to a sale of estate assets. In re Crown Corporation, 679 F.2d 774 (9th Cir. 1982). The Crown
20 Corporation court entered an order specifying the minimum consideration required for an
21 overbid as well as the particular contractual terms required to be offered by overbidders. Id. at
22 777. The Crown Corporation decision also approves an order requiring and setting the amount
23 of potential overbidder's deposits and authorized courts to determine the disposition of such
24 deposits. Id. While the discussion is not extensive, the Crown Corporation decision recognizes
25 the authority of bankruptcy courts to order the implementation of bidding procedures such as
26 those proposed in the present case.

27

28

1 **1. The Bidding Procedures are Untainted by Self-Dealing**

2 The Bidding Procedures have been brought in good faith and have been negotiated on an
3 “arms length” basis. Therefore, there is no prospective taint in dealings between the Debtor and
4 any potential bidders.

5 **2. The Bidding Procedures Encourage Bidding**

6 The Bidding Procedures are designed to encourage, not hamper bidding and are
7 reasonable under the circumstances. The Bidding Procedures are intended to provide potential
8 overbidders with adequate information to make an informed decision as to the amount of their
9 bid and the validity of their bid.

10 **3. The Bidding Procedures Serve the Best Interests of the Estate**

11 The proposed Bidding Procedures serve the estate in several ways. First, the procedures
12 themselves are fair, reasonable and productive; they will permit the Debtor to conduct an orderly
13 sale and obtain the best possible price on the best possible terms.

14 The Bidding Procedures will ensure that all bids will be comparable. The Debtor will
15 determine which bid is the highest and best for the Estate. The comparability requirement of the
16 Bidding Procedures will make it possible to accomplish this task.

17 The Bidding Procedures will help the Debtor to obtain the highest and best possible price
18 for the assets related to the operation of French 75 Laguna Beach. The Bidding Procedures
19 institutes minimum overbid increments which the Debtor believes are reasonable. Thus, the
20 Debtor will be able to obtain substantial benefit for this Estate from the sale from competing
21 bids.

22 The Bidding Procedure requires that potential bidders demonstrate their capacity to
23 complete the transaction. It would be a serious loss to the Estate if it surrendered the opportunity
24 to sell the assets related to the operation of French 75 Laguna Beach to one buyer in favor of a
25 competing bidder only to discover the Successful Bidder incapable of consummating the
26 transaction. Thus, requiring bidders to qualify as bidders will protect the Estate from such a loss.

27 The most important benefit of the Bidding Procedures to the Estate is that their
28 implementation will enable the consummation of the proposed sale. The proposed sale will be

1 best way to obtain the maximum and most expedient recovery for creditors of this Estate.
2 Implementation of the Bidding Procedures is an essential component of consummating the sale
3 of the assets related to the operation of French 75 Laguna Beach and maximizing the value of the
4 such assets for the Estate and creditors.

5 The Bidding Procedures utilized by the Debtor are fair and provide for a "level playing
6 field" for all prospective bidders with respect to the proposed sale. The Bidding Procedures
7 establish a reasonable but expeditious timeline for allowing the Debtor to give notice of the
8 proposed sale and qualified bidders to conduct reasonable due diligence and submit competing
9 offers, thereby potentially generating additional value for the assets related to the operation of
10 French 75 Laguna Beach. Furthermore, the notice of the the Bidding Procedures and Sale
11 Motion is designed to attract the most interest in the acquisition of the assets related to the
12 operation of French 75 Laguna Beach and is sufficient under the circumstances of this case.
13 Thus, approval of the Bidding Procedures would serve the best interests of the Estate and its
14 creditors.

15 **4. The Break-Up Fee is Reasonable**

16 As stated by the court in In re Financial News Network, 126 B.R. 152 (D.C., S.D.N.Y.
17 1991) at 154, "A break_up fee is an incentive payment to an unsuccessful bidder who placed the
18 estate property in a sales configuration mode . . . to attract other bidders to the auction." In
19 addition, as stated by the District Court in In re Integrated Resources, Inc., 147 B.R. 650, at 659-
20 661 (D.C., S.D.N.Y. 1992).

21 Break-up fees are important tools to encourage bidding and to
22 maximize the value of the debtor's assets. The usual rule is that if
23 break-up fees encourage bidding, they are enforceable; if they
24 stifle bidding they are not enforceable. In fact, because the
25 directors of a corporation have a duty to encourage bidding, break-
26 up fees can be necessary to discharge the director's duties to
27 maximize value.

28 CRTF Corp. v. Federated Department Stores, Inc., 683 F.Supp. at 441.

"Outside bankruptcy, the business judgment rule normally applies
to the board's use of a defensive strategy, such as a break-up fee. . .
In assessing the incentive effect of the break-up fee, a court should
determine whether the dollar amount of the fee is so substantial
that it has a chilling affect on other prospective bidders. In making

1 this determination, the court should consider whether the proposed
2 acquiror attracted other bidders or simply received a potential
3 windfall. Break-up fees and other strategies may be legitimately
4 necessary to convince a white knight to enter the bidding by
5 providing some form of compensation for the risks it is
6 undertaking . . .

7 "A break_up fee should constitute a fair and reasonable percentage
8 of the proposed purchase price, and should be reasonably related to
9 the risk, effort, and expenses of the prospective purchaser. When
10 reasonable in relation to the bidder's efforts and to the magnitude
11 of the transaction, break_up fees are generally permissible In re
12 999 Fifth Avenue Assocs., 96 B.R. at 29.

13 In this case, the Debtor readily acknowledges that a significant amount of time, effort and
14 expense will have been incurred by the Buyer in performing its due diligence and negotiating the
15 terms of the sale the sale. In a transaction wherein the first overbid increment is anticipated to be
16 at least \$2,090,000 (Buyer's Purchase Price of \$1,900,000 plus an initial overbid of ten percent of
17 the Purchase Price, or \$190,000), it is anticipated that the Break-Up Fee of \$115,000 represents
18 less than six percent of the purchase price. More importantly, the Break-Up fee is only payable
19 in the event that there is a successful overbid. To the extent that competitive bidding increased
20 the final sales price and a sale takes place beyond that amount, the "net" to the creditors of the
21 Estate would rise dollar for dollar with every increment above the Buyer's offer and the Break-
22 Up Fee would remain constant at \$115,000.

23 The Court should note that the Break-Up Fee is only payable in the event that the sale
24 closes and the Buyer is not the Successful Bidder, thereby distinguishing these facts from those
25 presented in In re Hup Industries, Inc., 140 B.R. 191 (Bankr. N.D. Ohio 1992), wherein the court
26 did not approve the break-up fee arrangement when the party proposed to receive the break-up
27 fee was to receive the same regardless of the outcome of the proposed sale in the event
28 overbidding took place. Thus, the Debtor requests the Court approve the Break-Up fee proposed
to be paid to the Buyer in the event the sale closes and the Buyer is not the purchaser.

1 **F. The Court has Authority to Waive the Ten-Day Stay of Sale**

2 Federal Rule of Bankruptcy Procedure 6004(g) provides that “[a]n order authorizing the
3 use, sale or lease of property other than cash collateral is stayed until the expiration of 10 days
4 after entry of the order, unless the Court orders otherwise.”

5 The Debtor desires to close the sale transaction as soon as practicable after entry of an
6 order approving the sale. Accordingly, the Debtor requests that the Court in the discretion
7 provided it under Federal Rule of Bankruptcy Procedure 6004(g), waive the ten-day of the order
8 approving the sale transaction proposed herein.

9 **V. CONCLUSION**

10 **WHEREFORE**, based upon the foregoing, the Debtor respectfully submits that good
11 cause exists for granting the Sale Motion and requests that the Court enters an order as follows:

12 1. Approving the Bidding Procedures utilized by the Debtor in connection with the
13 sale proposed sale of the assets related to the operation of French 75 Laguna Beach, including
14 approval of the proposed Break-Up Fee.

15 2. Authorizing the Debtor to sell the assets related to the operation of French 75
16 Laguna Beach to the Buyer pursuant to the terms and conditions as set forth in the Purchase
17 Agreement and the Interim Operating Addendum attached as **Exhibits 1 and 2** to the Rourke
18 Declaration.

19 3. Authorizing the sale to proceed free and clear of liens, claims, interests and
20 encumbrances.

21 4. Approving the assumption and assignment of the leases and and/or executory
22 contracts included in the sale as identified in the Schedules attached to the Purchase Agreement.

23 5. The order provide for a determination by the Court that the Buyer is in good faith
24 pursuant to Bankruptcy Code Section 363(m).

25 ////

26 ////

27 ////

28 ////

1 6. Authorizing the Debtor to sign any and all documents convenient and necessary in
2 pursuit of the sale as set forth above, including but not limited to any and all conveyances
3 contemplated by the sale and the Purchase Agreement.

4 7. Waiving the ten day stay of order approving the Sale Motion under Federal Rule
5 of Bankruptcy Procedure 6004(g).

6 8. And for such other and further relief as is just.

7
8 Dated: January 15, 2009

Respectfully submitted,

9 **SHULMAN HODGES & BASTIAN LLP**

10 /s/ Mark Bradshaw

11 _____
12 Leonard M. Shulman.
13 Mark Bradshaw
14 Attorneys for the Debtor and Debtor in Possession
15 Culinary Adventures, Inc., a Delaware corporation
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION

DECLARATION OF ROBERT ROURKE

I, Robert Rouke, declare:

1. I am the Chief Financial Officer and acting President of Culinary Adventures Incorporated, a Delaware corporation, the debtor and debtor-in-possession herein ("Debtor"). I have personal knowledge of the facts set forth herein and could, if called as a witness, competently testify thereto. I am also personally familiar with, and am custodian of, the records of the Debtor as they pertain to the financial records set forth herein. The records of the Debtor are made by agents of the Debtor who report to me and who have a business duty to enter the records of the Debtor accurately and at or near the time of the event which they record.

2. I am familiar with the Debtor's bankruptcy proceeding and make this Declaration in support of the Debtor's Motion for Order: (1) Approving the Sale of the Assets, Business and Properties Utilized by the Debtor in the Operation of the Debtor's Restaurant Known as "French 75 Laguna Beach" Free and Clear of Liens Pursuant to Bankruptcy Code Section 363(b)(1) and (f); (2) Approving Assumption and Assignment of Leases and Executory Contracts Included in the Sale; (3) Combined With Notice of Bidding Procedures and Request for Approval of Bidding Procedures and Break-Up Fee; and (4) Granting Related Relief ("Sale Motion"). Unless otherwise noted, capitalized terms herein have the meaning as set forth in the Sale Motion.

3. The Debtor filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code on August 14, 2008 ("Petition Date"). The Debtor is continuing in the operation and management of its business pursuant to Bankruptcy Code Sections 1107 and 1108.

4. The Debtor is based in Newport Beach, California and is owned 100% by Culinary Holdings, Inc. The Debtor owns four restaurants and prior to the Petition Date was the managing member of four limited liability companies which collectively owned five additional restaurants – all located in Orange County and Los Angeles County as follows:

<u>Restaurant</u>	<u>Owned by an LLC or by Culinary Adventures, Inc.</u>
Wilhelm's Chophouse 13290 Jamboree Rd. Irvine, CA 92602	French 75 Marketplace, LLC, a Delaware limited liability company

<u>Restaurant</u>	<u>Owned by an LLC or by Culinary Adventures, Inc.</u>
French 75 Newport Beach 327 Newport Center Dr. Newport Beach, CA 92660	French 75 Newport Beach, LLC, a Delaware limited liability company (formerly known as Rouge Bistro LLC, a Delaware limited liability company)
French 75 Laguna Beach 1464 South Coast Hwy Laguna Beach, CA 9265	Culinary Adventures, Inc.
Savannah 3400 West Olive Ave. Burbank, CA 91505	French 75 LACO, LLC, a Delaware limited liability company
Savannah 10250 Santa Monica Blvd. Los Angeles, CA 90067 (Century City)	French 75 LACO, LLC, a Delaware limited liability company
Savannah Supper Club 655 Anton Blvd. Costa Mesa, CA 92626	Chat Noir LLC, a Delaware limited liability company
Savannah at the Beach 315 Pacific Coast Hwy Huntington Beach, CA 92648	Culinary Adventures, Inc.
Savannah Chop House 32441 Golden Lantern Laguna Niguel, CA 92677	Culinary Adventures, Inc.
Sorrento Grille 370 Glenneyre St. Laguna Beach, CA 92651	Culinary Adventures, Inc.

5. The Debtor is the employer for all of the employees of the restaurants and is the tenant or guarantor for each of the real property leases related to the restaurants.

6. Substantially concurrent with the Petition Date, the Debtor closed Savannah Burbank, Savannah Century City, and Wilhelm's Chophouse (in Irvine). Continuing losses at each of these locations made the decision to close inevitable.

7. Also substantially concurrent with the Petition Date, the Debtor negotiated with the landlord for the Savannah Supper Club (in Costa Mesa). Pursuant to a lease amendment with Chat Noir LLC (the tenant), the landlord agreed to defer all rent and related expenses from August 2008 until March 2009 and to waive such deferred rent if the tenant remained current under the lease.

8. On September 26, 2008, the Debtor filed a motion to approve the sale of the assets, business and properties utilized by the Debtor in the operation of the Debtor's restaurant

1 known as "Sorrento Grille". That motion was granted and the Debtor is in the process of
2 finalizing the sale details.

3 9. Although the Debtor has been pressured by many of the same forces compelling
4 other recent restaurant bankruptcy filings, the Debtor has an excellent reputation and product and
5 intends to maintain operations at its profitable locations. The Debtor is also continuing its efforts
6 to reduce costs in light of uncontrollable expenses such as food. The Debtor has reduced its
7 corporate staff, is working to reduce the size and expense of its corporate headquarters, and has
8 closed unprofitable stores as discussed herein.

9 10. The Debtor intends to file its proposed plan of reorganization and disclosure
10 statement describing the plan by January 16, 2009 (the deadline previously set by the Court).

11 11. Subject to Court approval, the Debtor has received an offer from F75 Laguna
12 Beach, LLC ("Buyer" or "Purchaser") for the purchase of French 75 Laguna Beach pursuant to
13 the terms and conditions as set forth in a certain Asset Purchase Agreement (the "Agreement" or
14 "Purchase Agreement") and a certain Interim Operating Addendum.

15 12. A copy of the Purchase Agreement is attached hereto as **Exhibit 1** and a copy of
16 the Interim Operating Addendum is attached hereto as **Exhibit 2**.

17 13. The sale transaction will proceed such that the assets related to French 75 Laguna
18 Beach will be sold free and clear of all liens, claims, interests and encumbrances. The Buyer will
19 assume all of Debtor's rights and obligations arising after the closing under those contracts (and
20 only those contracts) listed on in the Purchase Agreement and the Schedules attached thereto;
21 provided that Buyer will not be obligated to assume any such contract for which assignment to
22 the Buyer requires the consent of the other party to such contract unless such consent has been
23 obtained in writing and delivered to Buyer on or before the closing of the transaction. The
24 Debtor shall remain liable for all obligations arising under such contracts through the closing. It
25 is expressly understood and agreed that Buyer will not be liable for any of the debts, obligations
26 or liabilities of Seller of any kind other than those specifically assumed by Buyer under the
27 Purchase Agreement and that Debtor shall remain liable and responsible for any all of its debts,
28 obligations and liabilities not expressly assumed by Buyer under the Purchase Agreement.

1 14. GE Capital Franchise Corporation ("GE") has a lien on substantially all of the
2 Debtor's assets including certain personal property and furniture, fixtures and equipment
3 associated with the French 75 Laguna Beach location. GE is owed approximately \$1.1 million
4 and its lien is also secured by other assets/stores owned by the Debtor. Credit Cash LLC
5 ("Credit Cash") has a lien on certain assets of the Debtor and is owed approximately \$450,000.
6 Pursuant to this Sale Motion, the lien of GE and the lien of Credit Cash will attach to the
7 proceeds from the sale of French 75 Laguna Beach in the same priority as they held prior to the
8 Petition Date. Pursuant to this Sale Motion, the Debtor will be authorized to pay GE and Credit
9 Cash from the sale proceeds prior to confirmation of the Plan.

10 15. The Debtor has made a business decision that it is in the best interest of the
11 creditors of this Estate that this Sale Motion be approved. The sale provides substantial benefit
12 to the Estate and its creditors.

13 16. The sale provides a meaningful benefit to the Estate and its creditors. French 75
14 Laguna Beach is perhaps the Debtor's best known location and has been a profitable store for the
15 Debtor. However, the going concern value and underlying lease for the French 75 Laguna Beach
16 premises have more value for the Estate through the proposed sale transaction than the Debtor
17 would realize through continued operation of the restaurant. The purchase offer will enhance
18 Debtor's reorganization and so the Debtor has made a business decision that it is in the best
19 interest of the creditors of this Estate that this Sale Motion be approved.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Executed at Newport Beach, California on January 15, 2009.

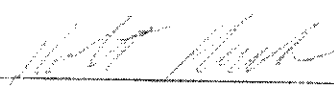
23
24 
25 Robert Rourke
26
27
28

EXHIBIT 1
Purchase Agreement